

Slide 1



**Washington State Auditor's Office**  
**Troy Kelley**

Independence • Respect • Integrity

**Open Government & Transparency  
Training**

Presented in Olympia, Washington

March 24, 2015

Slide 2

**Open Government & Transparency Training**

**Welcome & Introductions**

**Doug Cochran**, Chief of Staff

**Jan Jutte**, Director of Operations

Washington State Auditor's Office2

## State Auditor's Office Strategic Goals

### Help governments work better, cost less and deliver higher value

Materials from these presentations will be online at our website:  
[www.sao.wa.gov](http://www.sao.wa.gov)



Washington State Auditor's Office

3


The mission of our Office is to hold state and local governments accountable for the use of public resources.

The Local Government Performance Center within the State Auditor's Office offers tools and training to help local leaders who want their governments to work better, cost less, and improve the value of their services to citizens.

### Local Government Performance Center

**The Local Government Performance Center offers:**

- Online resource center with tools and examples at [www.sao.wa.gov/performancecenter](http://www.sao.wa.gov/performancecenter)
- Training on how to improve government services
- Customized on-site training sessions (on request, and within available resources)



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4

As performance auditors, we conduct research and use tools that, if shared more broadly, could help many local governments reduce their costs and improve performance.

Sometimes an independent perspective and expertise from outside the organization can help you see and do things differently.

We believe that by sharing what we know through this project, we can reach more governments faster and cheaper than by doing one local government audit at a time.

We didn't come up with this idea all by ourselves. A few local government leaders who know that "business as usual" can't continue said they would welcome help from the Auditor's Office. (Yes, they have actually invited the auditors to come in!) Early pilot projects have received very favorable responses.

### MRSC Resources

The collage displays five MRSC resource documents. On the left, there are two documents: 'OPMA - AGENCY OBLIGATIONS: A STARTING POINT PRACTICE TIPS' and 'OPMA - NOTICE REQUIREMENTS PRACTICE TIPS'. In the center is a purple 'OPMA - EXECUTIVE SESSIONS CHECKLIST'. On the right is a blue 'PRA - AGENCY OBLIGATIONS: A STARTING POINT CHECKLIST'. Each document provides specific guidance and checklists for local government compliance with the Open Public Meetings Act (OPMA) and the Public Records Act (PRA).

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5

**Open Government & Transparency Training**

**Today's topics**

1. Open Public Meetings Act
2. Requests for Public Records
3. Records Management

*The handout has information about additional resources on these topics.*

Washington State Auditor's Office 6

A few items of housekeeping:

- A caution – If there is a quorum of council or board members in attendance, please do not inadvertently violate the OPMA by discussing entity business.
- This training complies with ESSB 5964 (Chapter 66, Laws 2014), open government trainings act requirements.
- Certification – there will be sign-out sheets in the back, please leave your name and email address and we'll email you a certificate of completion.

The goal of today's presentation is to provide information and no cost tools to local governments on –

Why is the State Auditor's Office providing training?

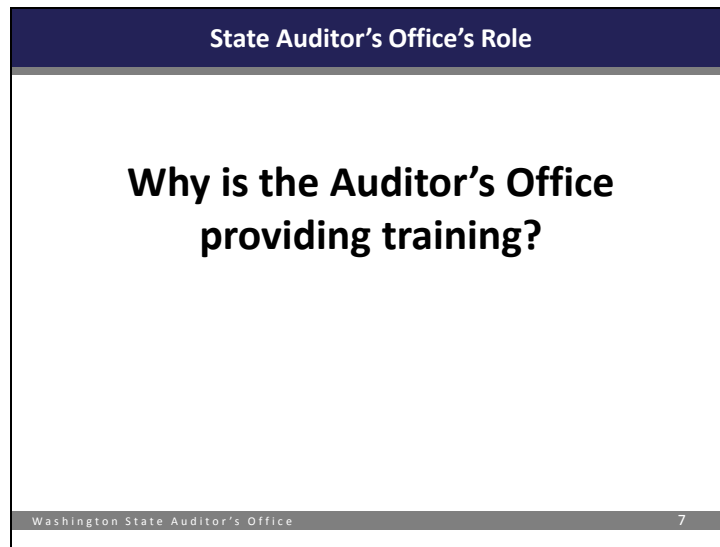
The State Auditor's Office has a key role in open government and transparency.

OPMA Compliance – An entity's payment/expenditure approval must be done in an open public meeting.

A handout from today's presentation will have information about the Local Government Performance Center Best Practices OPMA publication, and MRSC's *The Open Public Meetings Act – How it Applies to Washington Cities, Counties, and Special Purpose Districts* (Report Number 30, May 2012) (<http://www.mrsc.org/publications/opma12.pdf> )

Managing requests for records made under the Public Records Act.

Records Retention Compliance - Entities must retain supporting documentation for audit purposes.



The slide features a dark blue header with the text "State Auditor's Office's Role" in white. The main body is white with the question "Why is the Auditor's Office providing training?" in bold black text. At the bottom, there is a thin grey bar containing the text "Washington State Auditor's Office" on the left and the number "7" on the right.

State Auditor's Office's Role

**Why is the Auditor's Office providing training?**

Washington State Auditor's Office 7

The State Auditor's Office has a key role in open government and transparency.

Our office reviews OPMA compliance when reviewing the approval of an entity's payments/expenditures. Approval of payments and expenditures must be conducted in an open public meeting. We also note approval of contracts and major projects.

Additionally, our office routinely review records retention compliance when we review the supporting documentation for financial transactions.



**Open Public Meetings Act**

**What the Legislative Declaration says:**  
... The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created.

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[RCW 42.30.010]

- Act has several clear requirements and compliance improves with training.
- Training can mean the difference between complying with the law and expensive litigation.
- The principles of the Act:
  - ☐ Open government is essential to a free society.
  - ☐ The OPMA applies to all local governments
  - ☐ Actions and deliberations of governing bodies must be conducted openly
  - ☐ Meetings subject to the act must be open to the public unless a law permits the meeting or part of a meeting to be closed.

Open Public Meetings Act	
<b>Scope of the law:</b>	
<ul style="list-style-type: none"><li>▪ All governing bodies of multimember boards must comply.</li><li>▪ However, some activities of governing bodies are not subject to the OPMA.</li><li>▪ The courts and the Legislature are not subject to the OPMA.</li></ul>	
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**RCW 42.30.020(1)(a) – (d)**

"Public agency" means:

(a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature;

(b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;

(c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies;

(d) Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

**RCW 42.30.020(2) – Definition of "governing body."**

**RCW 42.30.140**

That this chapter shall not apply to:

(1) The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation,

or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary; or

(2) That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group; or

(3) Matters governed by chapter 34.05 RCW, the Administrative Procedure Act; or

(4)(a) Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.

Open Public Meetings Act

**“Meeting” means gatherings at which action is taken.**

- “Action” means the transaction of business that includes but is not limited to:
  - Receipt of public testimony
  - Deliberations
  - Discussions
  - Considerations
  - Reviews
  - Evaluations
  - Final actions
- Members are not required to be physically present
- OPMA applies even if the event is not titled a “meeting”
- No quorum = no meeting

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10

[RCW 42.30.020(4)]

The Act’s definition of “meeting” is also very broad.

- “Meeting” means gatherings at which action is taken.
- The physical presence of members is not required to be a meeting.
- It doesn’t need to be titled “meeting” for the Act to apply (i.e. retreats, workshops, study sessions are subject if there is a quorum of members are present).
- Remember, for the most part if there is no quorum there is no meeting.

Meetings can occur in a telephone conference call, a series of telephone calls or by email or a series of discussions.

For example: one member calls the other board members to ask how they are voting on a particular issue. This is polling and if a quorum is “polled” a meeting has occurred that was subject to the Act. This could also occur in a conference call, via email, or by someone going from office to office.

Meetings can be held by conference call when procedures permit the public to attend:

- all public notice procedures have been satisfied AND
- the entity sets up a process for the public to attend (e.g. speaker phone so public can hear discussion)


However, a quorum of a governing body may travel or gather together like today for training so long as they do not take any actions. Remember, action includes a simple discussion of entity business.

**Open Public Meetings Act**

**“Final action” means: Vote or collective decision**

Final action must occur in public meeting

Secret ballots not allowed



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11

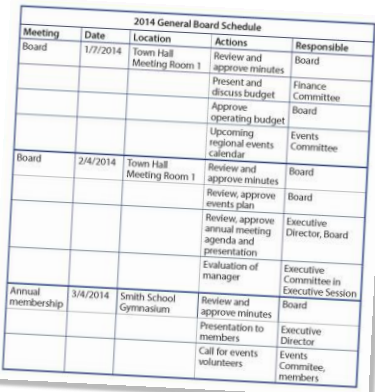
RCW 42.30.020(3)

**Open Public Meetings Act**

**What is a “regular” meeting?**

**What is a “special” meeting?**

**What about an “emergency” meeting?**



Meeting	Date	Location	Actions	Responsible
Board	1/7/2014	Town Hall Meeting Room 1	Review and approve minutes	Board
			Present and discuss budget	Finance Committee
			Approve operating budget	Board
			Upcoming regional events calendar	Events Committee
Board	2/4/2014	Town Hall Meeting Room 1	Review and approve minutes	Board
			Review, approve events plan	Board
			Review, approve annual meeting agenda and presentation	Executive Director, Board
			Evaluation of manager	Executive Committee in Executive Session
Annual membership	3/4/2014	Smith School Gymnasium	Review and approve minutes	Board
			Presentation to members	Executive Director
			Call for events volunteers	Events Committee, members

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12

### What are regular meetings?

Recurring meetings held within a periodic schedule.

Can be established by ordinance, resolution, bylaws or other rule.

Agendas must be posted on website 24 hours prior to meeting subject to OPMA (but can be amended during the meeting).

RCW 42.30.070

Chapter 61, Laws of 2014 (SHB 2105)- Posting of agendas on website 24 hours prior to meeting requirement effective date is 6/12/14.

### What about “special” meetings? What are they:

Not regular meetings; called by chair or majority of members.

Certain requirements apply: 24 hour advance written notice provided:

To members of governing body

To local newspapers, radio and TV stations with request on file

Posted on entity's website (exceptions\* apply)

Prominently displayed at main entrance and meeting site

\*Exceptions: (1) no website

(2) fewer than 10 employees

(3) has website but does not employ someone to maintain or update the website.

RCW 42.30.075

Notice must include the date, time, place and business to be transacted. You are limited to what is listed on the agenda for that meeting. There is an exception for emergency meetings.

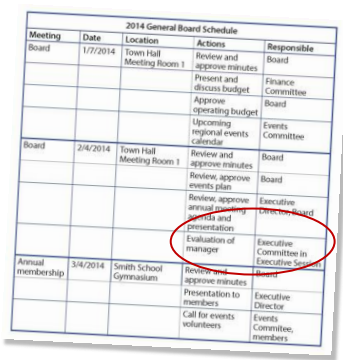
The emergency must involve injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.



### Open Public Meetings Act

**Executive sessions**

- Closed to the public
- Limited in purpose
- Publicly announced



Meeting	Date	Location	Actions	Responsible
Board	1/7/2014	Town Hall Meeting Room 1	Review and approve minutes	Board
			Present and discuss budget	Finance Committee
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			Upcoming regional events calendar	Events Committee
Board	2/4/2014	Town Hall Meeting Room 1	Review and approve minutes	Board
			Review, approve events plan	Board
			Review, approve annual operating budget and presentation	Executive Committee in Executive Session
			Evaluation of manager	Executive Committee in Executive Session
Annual membership	3/4/2014	Smith School Gymnasium	Review and approve minutes	Board
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			Call for events volunteers	Events Committee, members

Washington State Auditor's Office 13

Part of a regular meeting or special meeting that is closed to the public.  
 Limited in purpose and exemptions narrowly construed.  
 Purpose and time it will end must be publically announced.  
 Can only discuss topics publicly announced during open meeting.

A board or council may go into executive session (closed meeting) only for specified purposes.  
 These purposes are set out in  
 RCW 42.30.110(1) (a)-(o).

The return time can be extended by providing another public announcement

The executive session basis and the time announced should be reflected in the minutes of the meeting

Some categories of meetings are not subject to the OPMA (RCW 42.30.140)

Entities must carefully follow the laws' procedures for executive and closed sessions.

Open Public Meetings Act

Other important issues to be aware of

Attendance & Comment

- Must be open to public
- No conditions on attendance
- If you permit public comment, you may develop your own procedures limiting comment time

Minutes

- They are required
- However, no required format
- Prompt and open to public view

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14

A meeting must be open to the public and there can be no conditions on attendance.

A person cannot be required to:

- ☐ Sign in
- ☐ Complete a questionnaire
- ☐ Otherwise fulfill any condition precedent

RCW 42.30.040

The purpose of the Act is to allow the public to attend and observe the transaction of entity business.

The Act does not include a requirement to allow public comment. If the entity allows public comment, the entity can put reasonable procedures in place limiting public comment time.

The Act has provisions to address disruptions of public meetings (RCW 42.30.050)

#### **RCW 42.30.050**

##### **Interruptions — Procedure.**

In the event that any meeting is interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are interrupting the meeting, the members of the governing body conducting

the meeting may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by majority vote of the members. In such a session, final disposition may be taken only on matters appearing on the agenda.

Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the governing body from establishing a procedure for readmitting an individual or individuals not responsible for disturbing the orderly conduct of the meeting.

## **Minutes**

### **RCW 42.32.030**

#### **Minutes.**

The minutes of all regular and special meetings except executive sessions of such boards, commissions, agencies or authorities shall be promptly recorded and such records shall be open to public inspection

**Open Public Meetings Act**

**What issues do we encounter?**

- Quorum conducting business outside of an open public meeting.
- Improper executive sessions

**Common documentation issues...**

- Minutes of meeting did not document purposes of executive sessions or when it will conclude

**Finally:** If a quorum is present, do not proceed unless...

Washington State Auditor's Office15

**Common issues we encounter:**

- Minutes did not document the purposes of session.
- Did not document the announcement of when the executive session will conclude.

Finally, if a quorum is present, do not proceed to discuss entity business unless all OPMA statutory requirements have been met.

**Open Public Meetings Act**

**Penalties can be imposed if the meeting violates OPMA**

**To avoid problems, conduct and document meetings in compliance with OPMA**

Washington State Auditor's Office 16

If OPMA is violated:

Court can award civil penalties and declare action taken as null and void.

Members in attendance could be subject to civil penalty (\$100 each).

RCW 42.30.120 and 42.30.130

A presentation slide with a dark blue header bar containing the text "Open Public Meetings Act". The main body of the slide is white and contains the text "Any questions on the OPMA?". At the bottom, there is a thin grey bar with "Washington State Auditor's Office" on the left and the number "17" on the right.

**Open Public Meetings Act**

**Any questions on the OPMA?**

Washington State Auditor's Office 17

**Open Government & Transparency Training**

**Next we address two closely related topics...**

- What to do when a member of the public makes a **request for public records** under the provisions of Washington's Public Records Act.
- It is much easier to respond to a request if you have a functioning **records management system**.

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18

**Requests for Public Records**

**What is the Public Records Act?**

- History of RCW 42.56
- Purpose: Give citizens full access to government
- Intent: Open government essential to free society

**All government agencies and organizations must comply.**

Washington State Auditor's Office19

## RCW 42.56

History – 1972 Initiative

Purpose – Provide citizens full access to entity/public records

Principles:

Open government essential to free society

All public agencies must comply

All records are available unless statutory exemption applies

Board mandate in favor of disclosure and exemptions narrowly construed.



Requests for Public Records	
<b>“Public record” defined</b>	
A writing containing information relating to the conduct of government or the performance of any governmental or proprietary function, prepared, owned, or retained by an entity...	RCW 42.56.010(3)
<b>“Writing” defined</b>	
...means any form of communication or representation... from which information may be obtained or translated.	RCW 42.56.010(4)
Washington State Auditor's Office	20

A writing containing information relating to the conduct of government or the performance of any governmental or proprietary function, prepared, owned, or retained by an entity. RCW 42.56.010(3)

It also includes any document used or received by any government, not just those they create.

If employees work on entity business using their home devices, any records saved on the home computer, tablet or cell phone would also be considered a public record.

Requests for Public Records	
<p><b>Does your organization...</b></p> <ol style="list-style-type: none"><li>1. Have a process for capturing records requests?</li><li>2. Have a method to track these requests?</li><li>3. Train every employee on how to recognize a request for public records?</li><li>4. Document this training?</li></ol>	
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**Requests for Public Records**

**The Attorney General's Model Rules are...**

- Available online
- Entities may adopt any portion as their own
- Based on outreach, but not binding
- Cited by courts

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#### WAC 44-14

Not binding but they are based on outreach with stakeholders, court cases and have been cited favorably by courts

Available online

Entity can adopt any portion as their own

Provide useful comments in interpreting the act

Not binding but...

Slide 23

**Requests for Public Records**

**How the Public Records Act is applied**

- Applies to state and local entities
- All records must be disclosed unless a law exempts record or information
- Courts are not subject to the Act


Washington State Auditor's Office23

RCW 42.56.030

**Public Records Act**

What do we **have to do** under the PRA?

- Appoint a public records officer
- Publish information on how to request records
- Establish policies and procedures
- Provide an index



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24

Must appoint a public records officer (PRO)

PRO and contact information published with info on how to submit requests for records

Must establish:

- public records policies
- index of categories

RCW 42.56.030

Public Records Officer = RCW 42.56.580

Establish policies = 42.56.070

**Public Records Act**

**Public records requests**

- Can be in writing on entity's form delivered by hand, emailed, web-based submission, or fax
- Can be made verbally, in person or by telephone

*A request for information is not a request for records.*

*Entities have no duty to create a record that does not exist.*

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If you adopt reasonable policies on how requests should be submitted, an entity can rely on them. RCW 42.56.100, WAC 44-14-01002.

RCW 42.56.080 – requests/records available for public review and copying

Practical practice tip – fulfilling a request for information may help to avoid a large public records request.

**Requests for Public Records**

**Public records requests**

- Must respond within 5 business days of receiving request
- Response must provide one of following:
  - Acknowledge you received request and an estimate of when it will be fulfilled
  - Fulfill request
  - Provide internet address and link
  - Seek clarification of request
  - Deny request with explanation for denial

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**Requests for Public Records**

**Public records requests: Seeking clarification**

- Provides the fullest assistance to requestor
- Results in prompt disclosure by identifying only desired records
- Means the requestor receives and pays for only those records requested

Washington State Auditor's Office 27

Entity should not seek clarification if request is reasonably clear.

If entity seeks clarification and requestor does not respond, entity can close the request.

Model rules recommend giving a requestor 30 days to clarify the request for records - WAC 44-14-04003(7)



**Requests for Public Records**

**Public records requests:** Reasonable estimates

- Provide a reasonable estimate of response time in initial response
- What should a reasonable estimate consider:
  - Clarification needed
  - The resources needed to process the request
  - Any notices

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Initial response: (5-day letter).

Should consider:

- ☐ If clarification is needed
- ☐ Entity resources to process request
- ☐ Time to assemble and review records
- ☐ Notice to affected entities or persons (if needed)
- ☐ Time to redact exempt information (if needed)
- ☐ Time to create a withholding and/or exemption log

RCW 42.56.520

Practice Tip – We have found that providing a brief explanation for the basis of the estimated time to complete the request is helpful.

An entity can update/extend the estimated time to respond if it is determined additional time is needed. The extension should be in writing and provide an explanation on why extension is needed and should be sent before the original due date.

Requests for Public Records	
<b>Public records requests: Adequate searches</b>	
An entity:	
<ul style="list-style-type: none"><li>▪ Bears the burden to show that search was adequate</li><li>▪ Should document how search was conducted and what terms were used</li><li>▪ Should not limit search to one or more locations if there are additional places where responsive records are likely to be found</li><li>▪ Must make records available during regular business hours at least 30 hours a week</li></ul>	
Washington State Auditor's Office	29

Must make records available at least 30 hrs/week = RCW 42.56.090

**Requests for Public Records**

**Electronic records**

- PRA does not distinguish between electronic and paper records.
- Develop policies that address technology concerns

Consider making public records widely available electronically, especially those records that are commonly requested

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Electronic records:

- ☐ Should be produced in requested format
- ☐ Can include request for metadata
- ☐ Metadata may include when document was created, who edited, recipients, etc.

When acquiring new technology, the entity should address records retention and public records act requirements, in addition to the business needs of the entity when determining what technology best fits the entity's needs.

Develop Policies addressing technology concerns: (i.e. when employees can use personal devices to conduct public business)

Entities are encouraged to make public records widely available electronically, especially those records that are commonly requested. If these records are posted on an entity's website, the entity can simply provide a link to the record(s) to the requestor.

Note: if the requestor does not have access to the internet or requests paper records, the entity must provide the records to requestor after any appropriate fee has been paid.

## Requests for Public Records

### An example of email metadata

From:	Cindy Evans <SAO/FIRST ADMINISTRATIVE GROUP/RECIPIENTS/EVANS>
To:	Pete Donnell <donnellp@sao.wa.gov>
Subject:	Metadata Example
Sent:	4/28/2014 5:15:30 PM +00:00

Pete:

The lazy brown fox jumped over the moon.

Cindy Evans  
360.725.5585

Message Headers:	Received: from SAOMXOLY001.sao-nt.wa.gov ([fe80::119:a488:5197::415]) by SAOMXOLY007.sao-nt.wa.gov ([fe80::54ae:bd89::22f:19449:10]) with mapi; Mon, 28 Apr 2014 10:15:31 -0700Content-Type: application/ms-tnef; name="winmail.dat"Content-Transfer-Encoding: binaryFrom: Cindy Evans <evansc@sao.wa.gov>To: Pete Donnell <donnellp@sao.wa.gov>Date: Mon, 28 Apr 2014 10:15:30 -0700Subject: Metadata ExampleThread-Topic: Metadata ExampleThread-Index: Ac9JBWaiCRUnqipXSWOPrUwpKOz4w==Message-ID: <FB81FCBD943D654CA00A45250890A6AC0B9C84BF69@SAOMXOLY001.sao-nt.wa.gov>Accept-Language: en-USContent-Language: en-USX-MS-Has-Attach: X-MS-Exchange-Organization-SCL: 1X-M5-TNEF-Correlator: <FB81FCBD943D654CA00A45250890A6AC0B9C84BF69@SAOMXOLY001.sao-nt.wa.gov>MIME-Version: 1.0
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Washington State Auditor's Office31

Requests for Public Records	
<b>An example of email metadata</b>	
Message Headers:	<pre>Received: from SAOMXOLY001.sao-nt.wa.gov ([fe80::119:a488:5187:e415]) by SAOMXOLY007.sao-nt.wa.gov ([fe80::54ae:bd93:a22f:1944%10]) with mapi; Mon, 28 Apr 2014 10:15:31 -0700Content-Type: application/ms-tnef; name="winmail.dat"Content-Transfer-Encoding: binaryFrom: Cindy Evans &lt;evansc@sao.wa.gov&gt;To: Pete Donnell &lt;donnellp@sao.wa.gov&gt;Date: Mon, 28 Apr 2014 10:15:30 - 0700Subject: Metadata ExampleThread-Topic: Metadata ExampleThread-Index: Ac9jBWaiCRUnqjpXSWOPrUwpKOpz4w==Message-ID: &lt;FB81FCBD943D654CA00A45250890A6AC0B9C848F69@SAOMXOLY 001.sao-nt.wa.gov&gt;Accept-Language: en-USContent-Language: en- USX-MS-Has-Attach:X-MS-Exchange-Organization-SCL: -1X-MS-TNEF- Correlator: &lt;FB81FCBD943D654CA00A45250890A6AC0B9C848F69@SAOMXOLY 001.sao-nt.wa.gov&gt;MIME-Version: 1.0</pre>
Washington State Auditor's Office	
32	

**Requests for Public Records**

**Public records requests:** Managing broad requests

- Work with requestors to narrow the scope
- Tell them about potential costs and deposits
- Supply records in installments

Washington State Auditor's Office33

- May receive a very broad request for “any and all records”
- Cannot deny a request because it’s overly broad
- Work with requestor to narrow the scope
- Inform the requestor the approximate number of responsive documents and potential copying costs to provide records
- Can request a deposit, not to exceed 10% of estimated cost to provide
- Can provide records in installments and require payment for each
- If installment is not claimed or reviewed, not obligated to fulfill balance of request.

RCW 42.56.080

10% deposit = RCW 42.56.120

Installments = RCW 42.56.080

No obligation to fulfill balance of request if installment not claimed or reviewed = RCW 42.56.120

**Public Records Act – Fees**

**Public records requests: Fees**

- Records must be free for inspection
- What can you charge for?
  - Determining reasonable or actual costs
  - Electronic records

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- Any person can inspect a record for free
- May not charge for the time of staff to search, review or redact records
- May charge for actual per page copying costs
- May charge for reasonable staff time to copy records
- If no staff to copy records may have outside vendor and bill requestor for amount charged by vendor
- If originally an electronic record, the fee for record would be the cost of a CD and postage
- Must make available for public inspection and copying a statement of actual per page costs or other costs and how they are determined
- If have not determined actual costs, cannot charge more than 15 cents/page

RCW 42.56.070 and RCW 42.56.120

### Requests for Public Records

**Withholding a public record:** What exemption applies

Exemptions from public disclosure are *narrowly construed* – for example:

- Personal information
- Education records
- Protected health care information

If you redact information, provide **all** but the expressly exempted information.

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35

If withholding a record, must include a statement of specific exemption and how it applies

Common exemptions:

- ☐ Personal information
- ☐ Investigative files of law enforcement entities
- ☐ Education records
- ☐ Attorney/client privileged information
- ☐ Protected healthcare information

If privacy is express element of specific exemption, it is only invaded if both:

- ☐ Highly offensive to a reasonable person, AND
- ☐ Not of legitimate concern to public

Exemptions are narrowly construed

If redact information, only redact exempt information and provide the rest

Exemptions narrowly construed = RCW 42.56.030

Exemptions are throughout state law and federal law – not just RCW 42.56





Requests for Public Records			
<p><b>Withholding a public record:</b> Maintain an exemption log</p> <p>Explain the withholding of records by providing detail</p>			
<b>Records Withholding Log for PRR #00000 – Withheld employee applications</b>			
DATE	TITLE OF DOCUMENT	TYPE OF DOCUMENT	EXPLANATION
3/23/07	State of Washington Employment Application [Electronic] for John Doe. (8 pages)	Personnel Form	Applications for public employment, including names of applicants, resumes and other related materials submitted with respect to an applicant are exempt from disclosure. RCW 42.56.250(2); RCW 42.56.050; and Resident Action Council v. Seattle Housing Authority, Resident Action Council v. Seattle Housing Authority, ___Wn.2d___, 300 P.3d 376 (2013).
5/20/08	Academic Transcripts for John Doe. (1 page)	Transcript	Applications for public employment, including names of applicants, resumes and other related materials submitted with respect to an applicant are exempt from disclosure. RCW 42.56.250(2); RCW 42.56.050; and Resident Action Council v. Seattle Housing Authority, Resident Action Council v. Seattle Housing Authority, ___Wn.2d___, 300 P.3d 376 (2013).
Washington State Auditor's Office			36

An exemption log is a good way to explain the reason for the withholding of records and it should include:

- ☐ Whether record is letter or email
- ☐ The date record was created or other relevant date
- ☐ The total number pages
- ☐ The sender and recipients
- ☐ The statutory authority for withholding the record or redacting information
- ☐ A brief explanation of how exemption applies
- ☐ The log can be hand written or spreadsheet

Slide 37

Requests for Public Records					
Another example of an exemption log					
Records Withholding Log for PRR #00000 - Attachments to emails withheld					
EMAIL DATE	TITLE	TYPE	AUTHOR	RECIPIENT	EXPLANATION
2/2/2010 (1:15 PM)	Deleted attachments to email with subject: "FW:EmploymentApp"  1. "WinZip Pro EmploymentApp.docx" - Word document containing State application for employment for John Doe (4 pages).  2. "John - Letter of interest.docx" - Word Document Title "Letter of Interest" for John Doe. (2 pages).  3. "John Doe - transcript.docx" - Word Document Title "University transcript" for John Doe. (4 pages).	Application Materials	Jane Doe	John Smith	Applications for public employment, including names of applicants, resumes and other related materials submitted with respect to an applicant are exempt from disclosure. RCW 42.56.250(2); RCW 42.56.050; and Resident Action Council v. Seattle Housing Authority, Resident Action Council v. Seattle Housing Authority, ___Wn.2d___, 300 P.3d 376 (2013).
Washington State Auditor's Office					37

Here are just two types of withholding logs: Word documents and email attachments.

The log should include:

- ☐ Whether record is letter/document or email
- ☐ Date record was created or other relevant date
- ☐ Total number pages
- ☐ Sender and recipients
- ☐ And the explanation of how the exemption applies

**Requests for Public Records**

**There is liability around the Public Records Act...**

- Potential for lawsuits
- Burden of proof is on the organization

**Good risk management:**

Understand the law and apply it correctly

Washington State Auditor's Office38

A requestor denied inspection or copies can seek review with entity and file lawsuit in Superior Court to access record.

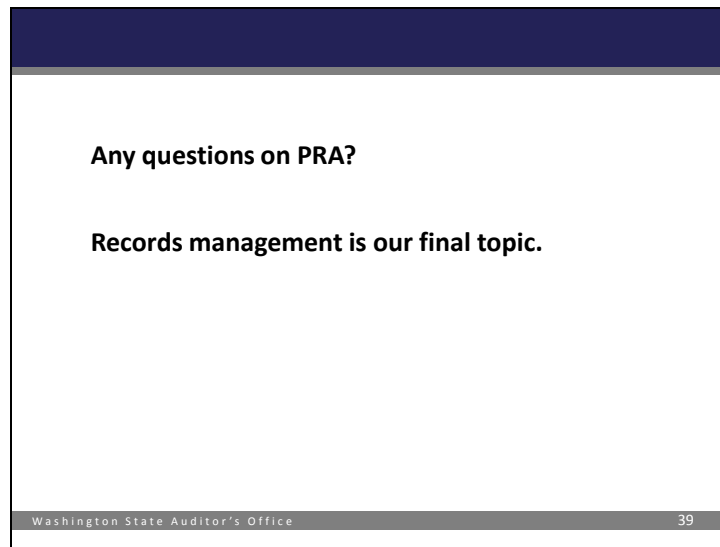
A requestor may file a lawsuit for the denial of record up to one year after the denial.

Entity has burden of proof to demonstrate that records were lawfully denied.

If burden is not met, entity must pay reasonable attorney fees and potential penalties.

Understanding and correctly applying law is good risk management.

RCW 42.56.550

A presentation slide with a dark blue header bar at the top. The main content area is white and contains two lines of bold black text. At the bottom, there is a thin grey bar with the text "Washington State Auditor's Office" on the left and the number "39" on the right.

**Any questions on PRA?**

**Records management is our final topic.**

Washington State Auditor's Office 39

## Records Management

You will be better able to comply with requests made under the Public Records Act if you have a functioning **records management system**.

Your first public record is your birth certificate.

You need it on occasion, and it is helpful to be able to find it when you do.



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40

**Records Management**

**The best laid plans of mice and men  
are filed here  
somewhere . . .**



*Apologies to Robert Burns.*

Washington State Auditor's Office 41

Robert Burns' poem "*To a Mouse*" The best-laid schemes o'mice an' men, Gang aft agley[.]

**Records Management**

**Do you and your employees know:**

1. What records your organization creates?
2. Is there a list of records and where they are stored?
3. How long should a record be kept?

Washington State Auditor's Office42

- Do you know what records your entity creates?
- Do you know if there is a list of those records and where the records are stored?
- Do you know how long a record should be kept according records retention requirements?
- Do you and your entity's employees know the answers to these questions?



## Records Management

### Identify your transitory records

Public records that only document information of temporary, short-term value. These records are:

- **Not** needed as evidence of a business transaction

**and**

- **Not** covered by a more specific records series

*Examples include:*

○ <i>Drafts of letters or spreadsheets</i>	○ <i>Shorthand notes after transcription</i>
○ <i>Routing slips</i>	○ <i>Voided architectural drawings</i>
○ <i>Voice messages</i>	

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The transitory definition is found in the Local Government Common Records Retention Schedule (Core). The Disposition Authority Number is GS50-02-05.

Includes, but is not limited to:

Miscellaneous notices or memoranda which do not relate to the functional responsibility of the agency (notices of community events, holidays, etc.);

Preliminary drafts of letters, memoranda, reports, work sheets, spreadsheets, presentations, and informal notes, etc., which do not represent significant basic steps in the preparation of the document(s);

Routing slips used to direct the distribution of documents;

Shorthand notes, stenotype tapes, and mechanical records, after they have been transcribed into typewritten or printed form on paper or microfilm;

Telephone messages (including voicemail, digital voice messages, etc.);

Letters of transmittal which do not add any information to the transmitted materials;

Abandoned, voided or defective architectural drawings

**Records Management**

**Training helps employees manage records properly**

1. Make records management a priority. Training should begin on day one.
2. After the first training, staff should know that:
  - A record cannot be destroyed unless its retention period has passed
  - An email is a public record subject to records retention requirements
  - What to do when a public records request has been made

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- Records management training should begin on day one of an employee's tenure with the entity.
- Each employee should understand the following three principles at the end of day one:
  - A record cannot be destroyed unless its retention period has passed.
  - An email is a public record subject to records retention requirements.
  - Understand what to do when a public records request has been made.

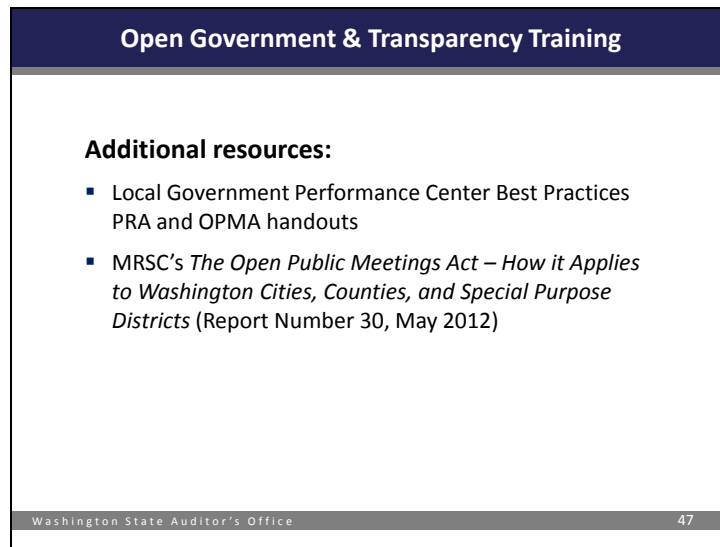
Records Management	
<b>Additional training resources</b>	
<b>Washington State Archives:</b>	
Records Management – Local Government	
<ul style="list-style-type: none"><li>▪ Where to find the records management website: <a href="http://www.sos.wa.gov/archives/RecordsManagement/records_local.aspx">www.sos.wa.gov/archives/RecordsManagement/records_local.aspx</a></li><li>▪ Email address for questions – <a href="mailto:archives@sos.wa.gov">archives@sos.wa.gov</a></li><li>▪ Phone number for questions – (360) 586-1492</li></ul>	
Washington State Auditor's Office	45

**Records Management**

**Any questions on Records Management?**

Washington State Auditor's Office

46



**Open Government & Transparency Training**

**Additional resources:**

- Local Government Performance Center Best Practices PRA and OPMA handouts
- MRSC's *The Open Public Meetings Act – How it Applies to Washington Cities, Counties, and Special Purpose Districts* (Report Number 30, May 2012)

Washington State Auditor's Office 47

The Local Government Performance Center Best Practices PRA and OPMA handouts will be emailed to participants when it is finalized.

The Link to MRSC OPMA report: <http://www.mrsc.org/publications/opma12.pdf>

**Open Government & Transparency Training**

**Wrapping it up...**

Visit our website at [www.sao.wa.gov](http://www.sao.wa.gov)

Please remember to sign out

The certificate of completion and this presentation  
will be emailed to you.

Washington State Auditor's Office48